BEFORE HON'BLE HIGH-COURT OF CHHATTISGARH AT BILASPUR (C.G)

WRIT PETITION NO. 3199 .2004

PETITIONERS: 1. MOSQUE ANJUMAN

IBADADGAH HANFIA G.E Road Charoda Through :- Secretary Anjuman Islamia Committee Charoda Bhiali Tah. Patan & Distt Durg C.G

2. SHEIKH IQBAL

aged about 50 years s/o Sheikh Ramzan R/O Railway Quarter No. 43 a Charoda Bmy Bhilai Tah. Patan & Distt Durg C.G

3. Mohd Abrar Khan

aged about 59 years s/o Abdul Awad Khan R/O L-C 22 Padum Nagar Bhilai Tah. Patan Distt. Durg C.G.

4. Sheikh HAROON

aged about 30 years s/o Sheikh Hussain Maroof Shoe Palace G.E Road Charoda Bhilai Tah. Patan Distt. Durg C.G.

5. Rizwan Mohammad

aged about 34 years s/o Jaan Mohammad r/o Quarter no. 261 BMY Charoda, G.E Road, Bhilai Tah. Patan Distt. Durg C.G.

6. MOHD. Yusuf KHAN

aged about 81 years s/o Mohd. Yakub Khan r/o Khan Building G.E Road Charoda, Bhilai Tah. Patan Distt. Durg C.G.

P.R. No. 3188/04 Presented by Shri V.G. Tamaskar dated 10-9-04

10.9.04

NOTARY B.W. COVERDHAN DURG INDIA

VERSUS

RESPONDENTS: 1. STATE OF CHHATTISGARH

Through: Principal Secretary Home Department Govt of Chhattisgarh D.K.S Bhawan G.E. Road Raipur C.G

2. CHAIRMAN CHHAATTISGARH STATE WAKF BOARD D.K.S Bhawan G.E. Road Raipur C.G

3. HAJI FAZIL BAKSH

aged about 75 years s/o Amir Baksh r/o Fazil Manzil Near Hanfia Maszid G.E Road Charoda Bhilai Tah. Patan Distt. Durg C.G.

4. THE COLLECTOR DURG C.G.

5. SENIOR SUPERINTENDENT OF POLICE Distt. Durg C.G.

PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

Writ Petition No.3190 of 2004

Mosque Anjuman Ibadadgah Hanfia, G.E. Road
Through Secretary Anjuman Islamia Committee Charoda, Bhilai,
Tehsil: Patan, District: Durg and others

- Versus -

State of Chhattisgarh and others

POST FOR ORDER ON 28th SEPTEMBER, 2005

Sd/-
L.C. Bhadoo
Judge

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition No.3190 of 2004

Mosque Anjuman Ibadadgah Hanfia, G.E. Road
Through Secretary Anjuman Islamia Committee Charoda, Bhilai,
Tehsil: Patan, District: Durg and others

- Versus -

State of Chhattisgarh and others

Present: -

Shri V.G. Tamaskar, Advocate:	For the petitioners.
Shri Sandeep Dubey, Govt. Advocate:	For the respondents No.1, 4 & 5.
Shri H.B. Agrawal, Sr. Advocate:	For the respondent No.3.

O R D E R

(Passed on 23rd September, 2005)

L.C. BHADOO, J.

1. The petitioners have preferred this writ petition under Article 226/227 of the Constitution of India with a prayer that respondents be directed to open the lock put on the entrance gate of the mosque in question by respondent No.3 and to permit the petitioners and all members of Muslim community to offer prayer, as they have been doing so since last 40 years.

2. The petitioners' petition is that the petitioner No.1 is an unregistered Wakf and the land on which the mosque in question is standing belongs to the petitioner No.1 and rest of the petitioners and almost all the residents of Muslim community are offering prayer (Namaz) since 1963 within the premises of the said mosque. The land on which the mosque is standing was gifted by an oral gift which is called Hibba by late Dr. Abdul Gani Sahed to Muslim community of village Charoda, District Durg and since then the

Muslim community is offering prayer in the mosque in question. Respondent No.3 is also a Muslim and he took a snap decision to put lock on the entrance gate of the mosque in question on 2-8-2004. Respondent No.3 by making a false declaration and without noticing the petitioner No.1 got the land along with mosque in question registered in his name. A map showing the place of prayer since 1963 is marked as A. B. C. D. vide Annexure-P/2. The mosque in question has separate electricity connection and meter. Respondent No.3 filed a civil suit for eviction of one of the tenants namely Ashok Kumar Choudhary. The only ground for eviction taken by respondent No.3 was that he wants to gift the shop to the petitioner No.1 i.e. Masjid.

3. Return has been filed on behalf of respondent No.3 in which it has been mentioned that the alleged mosque is not a mosque now but a dismantled area, since respondent belongs to Tabliki Jamat while the petitioners belong to Hanifia Jamat. The property or mosque alleged is personal property of the respondent No.3, hence no question of opening the lock, as prayed for. The petitioners have no locus standi to bring this petition. The petitioners have never offered any prayer as public Wakf, therefore, no legal right has been ever accrued to any petitioner. The land does not belong to the petitioner No.1 since no documents have been filed, but admittedly, it belongs to respondent No.3 as mentioned in para-11 of Annexure-P/6. There is distinction between the private Ibadatgah and public Ibadatgah. The petitioners are offering prayer in another big masjid situated in the same area of Charoda, Bhilai, which is made for Hanifia Jamat. The fact of oral gift is denied. It is denied that the

petitioners are offering prayer since 1963. Oral gift is not admissible. The whole land mentioned in Annexure-P/2 is not the property of respondent No.3 as admitted that it is the property of respondent No.3 in Annexure-P/6 at para-11. Ultimately, it has been prayed that the writ petition be dismissed.

4. I have heard learned counsel for the parties.

5. Shri V.G. Tamaskar, learned counsel for the petitioners, argued that there was Masjid in which the petitioners used to offer prayer daily. Even if there is no registered gift, the property can be gifted through oral gift and the concept of a private mosque is unknown to Muslim Law. He placed reliance on the judgment of the Madras High Court in the matter of **N.R. Abdul Azeez and others V. E. Sundaresa Chettiar and others** reported in **AIR 1993 MADRAS 169**, also on the decisions of the Hon'ble Apex Court in the matters of **Mahboob Sahab V. Syed Ismail and others** reported in **(1995) 3 Supreme Court Cases 693, Illahi Shamsuddin Nadaf V. Sou. Jaitunbi Makbul Nadaf** reported in **(1994) 5 Supreme Court Cases 476**, and **Ram Niwas Todi and another V. Bibi Jabrunnissa and others** reported in **(1996) 6 Supreme Court Cases 444**. He further argued that respondent No.3 has no right to put lock on the Masjid.

6. On the other hand, Shri H.B. Agrawal, learned Senior Counsel for respondent No.3, argued that in fact, there is no Masjid and the whole property belongs to respondent No.3. The allegation that the petitioners used to offer prayer at the alleged mosque has not been established and the same is denied. There are disputed facts which cannot be enquired

into or gone into in the writ jurisdiction. He further argued that at the disputed place the building was in a dilapidated condition and that has been demolished, and in fact, there is no building at the site in question where lock can be opened.

7. Having heard learned counsel for the parties, I have perused the records of the case. In the matter of **Ram Niwas Todi and another** (Supra) the Hon'ble Apex Court held that:

> "Oral gift-House property including open spaces of land appurtenant and subservient thereto- Oral gift by father-in-law to his daughter-in-law with delivery of possession- Valid."

Similarly, in the matter of **Illahi Shamsuddin Nadaf** (Supra) the Hon'ble Apex Court held that:

> "Declaration as well as acceptance of gift may be oral whatever may be the nature of the property gifted- Donor dividing the house into two portions and giving actual possession to the appellant, and the respondent- Both of them living in their respective portions for the last more than 40 years- Mutation of the property in their respective names-Held, the appellant and the respondent are the owners of the portions of the house which are in their respective possession."

In the matter of **Mahboob Sahab** (Supra) the Hon'ble Apex Court held that:

> "Gift- Immovable property- Ingredients of a valid gift- Need not be in writing and registered- Complete divesting of possession of the property by the donor essential."

Therefore, in view of the above decision, it is not necessary in the Muslim Law that the gift can be made only through in the written registered document. The gift can be oral, however, must be with delivery of possession. In the case of **N.R. Abdul Azeez and others** (Supra) the Madras High Court while dealing the question in Second Appeal held that:

> "The test whether a building is a mosque lies in the fact that once it was set apart as a mosque. It is enough to make it "Wakf", provided public prayers are even once said with the permission of the settlor. When a person purports to build a Masjid within his house, or boundaries, and permits the public to enter there and say their prayers then it becomes a Masjid according to the opinion of all, provided that he gives the public a right of way. Dedication may be inferred from long user that property was wakf property."

8. Now, the question is whether the petitioners have been able to plead and establish that there was any existing mosque and they were offering prayer in the said mosque. The averment made by the petitioners in the petition has been denied by respondent No.3 in his return and he has stated that it is a private property. The petitioners never offered prayer at the disputed place. Therefore, there is dispute between the parties

about the existence of the mosque and offering of prayer by the petitioners. There is no clear and cogent any documentary evidence or other evidence which establishes that the petitioners used to offer prayer in that mosque. This fact requires enquiry at trial after allowing the parties to adduce their respective evidence in the form of oral and documentary evidence without which it is difficult to arrive at a conclusion that the petitioners were offering prayer at the disputed place. Therefore, the judgment cited by learned counsel for the petitioners in the matter of **Gulam Abbas and others V. State of Uttar Pradesh and others** reported in **(1982) 1 Supreme Court Cases 71** is of no help to the petitioners. In that matter the Hon'ble Apex Court held that:

> ".....the petitioners are able to prove that they have existing or established customary rights to perform their religious ceremonies and functions on the plots and the structures thereon simultaneously complaining of illegal deprivation or encroachment by executive officers at the behest of the Sunni community the reliefs sought by them by way of enforcement of such customary rights will have to be entertained and considered on merits and whatever relief they may be found legally and properly entitled to may have to be granted to them."

9. In the present case as has been mentioned that there is no material on record which establishes the averment made by the petitioners. Therefore, proper course for the petitioners is to file a civil suit for their rights against respondent No.3. Even otherwise, the writ petition does not

lie in this case for the reason that the dispute is between the private persons. The writ can be issued only against the State and respondent No.3 is a private party, therefore, writ cannot be issued. In fact, the dispute is between the private parties. Therefore, proper course for the petitioners is to approach the Civil Court for redressal of their grievances. Even otherwise, respondent No.3 has mentioned in the return that as on date no building is existing at the disputed place and the photographs have also been produced showing that whatever structure was there that has been dismantled, therefore, in the circumstances, relief sought by the petitioners cannot be granted.

10. In the result, I am of the opinion that the writ petition is not maintainable on the ground that:

(1) the present matter involves disputed facts.

(2) the dispute is between the private parties.

(3) since there is no structure existing on the site, the relief prayed in the relief clause that to direct the respondents to open the lock put on the entrance gate of the mosque in question cannot be allowed.

Therefore, the writ petition is dismissed. No order as to costs.

Sd/-
L.C. Bhadoo
Judge

Barve